

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: §
§
Professional Fee Matters Concerning § Civil Action No. 4:23-cv-04787
the Jackson Walker Law Firm. §
§

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: § Chapter 7
§
BRILLIANT ENERGY, LLC, § Case No. 21-30936 (EVR)
§
DEBTOR. §

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

**MOTION FOR ORDER APPROVING COMPROMISE AND SETTLEMENT
PURSUANT TO BANKRUPTCY RULE 9019**

TO THE HONORABLE ALIA MOSES
CHIEF UNITED STATES DISTRICT JUDGE:

NOW COMES, Randy W. Williams, Chapter 7 trustee for Brilliant Energy, LLC (the “Trustee”) and files this *Motion for Order Approving Compromise and Settlement Pursuant to Bankruptcy Rule 9019* (the “Motion”), and in support thereof, respectfully shows the Court as follows:

RELIEF REQUESTED

1. By this Motion, and in accordance with Bankruptcy Rule 9019(a), the Trustee

requests that the Court enter an order approving the Settlement Agreement and Release (the “Settlement”) between Jackson Walker LLP (“JW”) and the Trustee that would resolve any and all claims and causes of action of any kind held by the Trustee and the Debtor’s estate against JW arising out of or related to *In re Brilliant Energy, LLC*, Case No. 21-30936 pending in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Case”), Case No. 23-00645, and the relationship between Elizabeth Freeman and former Bankruptcy Judge David R. Jones. A copy of the Settlement Agreement is attached as **Exhibit A** to the proposed order attached to this Motion. In exchange for the releases set forth in the Settlement Agreement, JW shall pay the Trustee \$100,000.00, which will be distributed by the Trustee in accordance with the final orders entered in this case and the Bankruptcy Code.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The basis for the relief requested herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

4. On March 16, 2021 (the “Petition Date”), Brilliant Energy, LLC (the “Debtor”) filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). The Bankruptcy Case was pending before former Judge Jones.

5. On April 13, 2021, the Trustee filed its *Application to Employ Jackson Walker LLP as Special Counsel Pursuant to 11 U.S.C. § 327* [Dkt. No. 68]. JW’s employment application was

approved by former Judge Jones on June 4, 2021. *See* Dkt. No. 131.

6. On October 19, 2022, the Trustee filed its *Motion for Miscellaneous Relief in Aid of Case Conclusion* [Dkt. No. 230], which was granted by the Court on December 4, 2022. *See* Dkt. No. 233.

7. On December 5, 2022, JW filed its *Final Fee Application for Compensation of Fees and Reimbursement of Expenses as Special Counsel for Randy W. Williams, Chapter 7 Trustee for the Period from March 16, 2021 Through November 28, 2022* [Dkt. No. 234] (the “Fee Application”). JW’s Fee Application was approved by the Court on December 30, 2022, awarding compensation and reimbursement of expenses in the amount of \$188,609.13. *See* Dkt. No. 241.

8. On or about November 2, 2023, Keven M. Epstein, the United States Trustee for Region 7 (the “U.S. Trustee”), filed a motion that sought, among other relief, the vacatur of orders approving JW’s retention as counsel and/or JW’s fee applications pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. *See* Dkt. No. 254. An amended Rule 60(b) motion was filed on February 29, 2024 [Dkt. No. 284] (the “Rule 60(b) Motion”). The basis of the Rule 60(b) Motion was the undisclosed relationship between former Judge Jones and JW’s former partner, Elizabeth Freeman.

9. On December 9, 2023, an Order was entered commencing a miscellaneous proceeding styled *In re Professional Fee Matters Concerning the Jackson Walker Law Firm*, Case No. 23-00645, pending before Chief Bankruptcy Judge Eduardo V. Rodriguez (the “Misc. Proceeding”).

10. On March 12, 2024, the Trustee filed a *Notice of Standing and Indispensable Party Status* [Dkt. No. 285] (the “Notice of Standing”), stating, among other things, that the Trustee “adopts and agrees with the allegations and arguments put forth by the U.S. Trustee in [its

pleadings].”

11. On May 22, 2024, JW filed its response in opposition to the Rule 60(b) Motion. *See* Dkt. No. 286.

12. On July 1, 2024, the U.S. Trustee filed its reply, and on August 12, 2024, JW filed its sur-reply. *See* Dkt. Nos. 287 & 289.

13. The parties to Misc. Proceeding engaged in discovery from May 2024 through December 2024, and a trial on the issue of vacatur of JW’s final fee application as raised in the Rule 60(b) Motion was previously set before the Chief Judge Rodriguez in May 2025.

14. In or around February and March of 2025, the parties began discussions regarding the possibility of settlement. Those efforts were successful, with the parties reaching a settlement in principle on March 12, 2025, which fully and completely settles and resolves the disputes between them on the terms and conditions set forth in the Settlement Agreement.

15. On April 9, 2025, the Honorable Chief United States District Judge Alia Moses entered a Memorandum Opinion and Order withdrawing the reference of this Bankruptcy Case, among others. See Civil Action No. 4:23-CV-4787-AM at Dkt. No. 31; see also Misc. Proc. No. 23-00645, at Dkt. No. 623

SUMMARY OF SETTLEMENT AGREEMENT¹

16. The Settlement Agreement is straightforward. Within five business days of entry of an Order granting this Motion and such Approval Order becoming a Final Order (as defined therein), JW will pay to the Trustee \$100,000.00, which settlement payment will be distributed pursuant to orders entered in the Bankruptcy Case and any applicable provisions of the Bankruptcy

¹ The summary of the settlement terms is being provided herein for convenience only. To the extent of any inconsistency between this summary and the Settlement Agreement attached hereto, the Settlement Agreement prevails. Capitalized terms not otherwise defined in this section shall have the meanings ascribed to such terms in the Settlement Agreement.

Code. The final fee order originally entered in the Bankruptcy Case will be vacated, and the Approval Order will approve JW's fees and expenses incurred in the Bankruptcy Case in a reduced amount taking into account the above-referenced settlement payment. The Trustee intends to use the settlement payment, subject to further Bankruptcy Court approval, to pay the fees and expenses of Byman & Associates, PLLC for its work related to the Misc. Proceeding (anticipated to be approximately \$56,000) and return the balance of the payment to DTE Energy Trading, Inc., the secured creditor who provided a carve out of its cash collateral to pay the JW fees and expenses ("DTE").

17. In exchange for this settlement payment, JW and the Trustee are providing mutual releases.

ARGUMENTS AND AUTHORITIES

18. Rule 9019(a) states that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement” Fed. R. Bankr. P. 9019(a). “Bankruptcy Rule 9019, unique in that it does not have a parallel section in the Code, has a ‘clear purpose...to prevent the making of concealed agreements which are unknown to the creditors and unevaluated by the court.’” *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 461 (5th Cir. 2007)(quoting *In re Masters, Inc.*, 141 Bankr. E.D.N.Y. 1992)).

19. “Courts have developed standards to evaluate if a settlement is fair and equitable, and, to that end, courts in [the Fifth] Circuit have set forth factors for approval of settlements based on the original framework announced in *TMT Trailer Ferry Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson...*” *Id.* at 462. Those factors are:

- i. The balance between the litigation’s possibility of success and the settlement’s future benefits;
- ii. The likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment;

- iii. The paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement;
- iv. Whether other parties in interest support the settlement;
- v. The competency and experience of counsel supporting, and the experience and knowledge of the bankruptcy judge reviewing, the settlement;
- vi. The nature and breadth of releases to be obtained by [the settling party]; and
- vii. The extent to which the settlement is the product of arm's length bargaining.

See Iridium, 478 F.3d at 462 (citing *TMT Trailer Ferry*, 390 U.S. at 424; *In re WorldCom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006); *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992)).

20. The Trustee contends that the terms of the Settlement Agreement are fair and equitable pursuant to the requirements established by the Supreme Court in *Anderson* and the Fifth Circuit in *Iridium*. The Settlement Agreement gives the Trustee and the Debtor's estate the full benefit of the Settlement Amount without the time, expense and uncertainty of continued and protracted litigation.

A. The balance between the litigation's possibility of success and the settlement's future benefits

21. The Trustee contends that the possibility of success in the litigation against JW is high but there are significant legal issues and questions concerning: (a) the amount of time it will take to litigate and/or recover against JW (including any applicable appeals); and (b) the amount of recovery the Trustee will realize through litigation when balanced against the cost of continued litigation. As the Court and parties in interest are aware, the Brilliant case is but one of a large number of matters related to the Rule 60 Motions filed by the U.S. Trustee, and the amount in controversy in the other cases is much larger than the fees and expenses awarded in this case. The Settlement Amount provides a significant recovery for the Debtor's estate for payment to creditors

in accordance with existing orders entered in the Bankruptcy Case and applicable provisions of the Bankruptcy Code, and eliminates the litigation risk of continuing to litigate the claims against JW.

22. The Trustee submits there is a significant likelihood that the orders approving JW's fee applications will be vacated, thus opening up the possibility that fees paid to JW will be clawed back to the Debtor's estate. However, the Trustee acknowledges that case law does not necessarily mandate full disgorgement; thus, there is some litigation risk. And in any event, appeals could also follow further extending the litigation timeline and increasing the costs, which is significant in the Bankruptcy Case given the relatively small amount of fees and expenses paid to JW. The Trustee also believes that it is significant that in this case, Elizabeth Freeman not only did not appear in the case, but she did not bill any time on the matter. Further, an issue presented in this fee dispute that the Trustee has not seen in any of the other reported cases involving lack of disclosure is the fact that the disclosure involved the trial judge. Here, while still on the bench, David Jones took and maintains the position that he had no obligation to either recuse himself from sitting as Judge in cases where Ms. Freeman's firm was Debtor's counsel, or to disclose to parties in interest the nature and scope of the relationship.

23. The Trustee retained Jackson Walker with Bankruptcy Court approval to represent him in other cases prior to the Brilliant case. The Trustee began his career at a firm where Bruce Ruzinsky was at the time a senior associate and worked with him for approximately four (4) years. The Trustee has always respected Mr. Ruzinsky as an excellent attorney. The Trustee and Mr. Ruzinsky have been in a number of other cases, where sometimes Mr. Ruzinsky represented the Trustee and in others where he represented creditors in cases where the Trustee also acted as a chapter 7 or chapter 11 Trustee.

24. The Trustee also knew and worked with Matt Cavanaugh, although he has not known Mr. Cavanaugh as long as Mr. Ruzinsky. Mr. Cavanaugh also represented the Trustee in other cases as well as represented creditors in cases where the Trustee acted as chapter 7 or chapter 11 trustee.

25. The Trustee selected JW for the Brilliant case because he knew that both Messrs. Ruzinsky and Cavanaugh had extensive experience in complex cases and also routinely appeared before and had a good relationship with then Judge Jones. Brilliant Energy was complex because it was a retail energy provider with thousands of customers, and the Trustee was required to obtain court approval to operate the business for a short time while in chapter 7 so as to minimize the disruption to commercial and residential retail customers who relied on Brilliant to provide them with electricity.

26. While the Trustee has also known Ms. Freeman for a number of years, and she too has also represented the Trustee in other cases, he did not consider her at the time as someone who would work on the Brilliant case. That said, the Trustee knew that Ms. Freeman had a long-standing association with then Judge Jones. The Trustee had also known David Jones prior to his appointment as Bankruptcy Judge. Jones and Freeman had been law partners and, as the Court knows, Freeman became then Judge Jones's law clerk. Prior to his being appointed as a Bankruptcy Judge, the Trustee retained David Jones, and his partner Elizabeth Freeman, when they were at Porter Hedges, to represent him in a number of chapter 7 cases. The Trustee was not aware until the article appeared in the Wall Street Journal that their relationship was anything more than a long-standing friendship and close working relationship.

B. The likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment

27. The litigation is complex, and it has been and will continue to be protracted

(litigation commenced over seventeen (17) months ago in November 2023). Indeed, while trial was set to commence in May 2025, that trial date has now been abated in light of the withdrawal of the reference (a move supported by the Trustee); thus, continued monitoring costs will only continue to accrue. More significantly, there are no other assets or matters to be dealt with in the Brilliant case, the only reason it has not been closed and final distribution made is the fee dispute litigation being settled herein.

28. Additionally, even if the order approving JW's final fee application is vacated in this case, such result may not necessarily result in disgorgement of 100% of fees given the case law and other considerations. Again, here, Ms. Freeman did not work on the case. This case was unique because although complex and initially fast moving, there were no unencumbered funds to pay administrative claims. DTE granted a carve out that was subject to budgeting and Mr. Ruzinsky on his own having to do the vast majority of the legal work. A settlement now brings finality and eliminates any meaningful litigation and/or collection risk, and puts an end to litigation costs after over seventeen (17) months of litigation.

C. The paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement

29. The Trustee is of the firm belief that the Settlement Agreement is in the best interest of the creditors as the Settlement Agreement removes any uncertainty of litigation, stops the Debtor's estate from incurring further attorney's fees and expenses in connection with these disputes, and provides a recovery that will not dilute the carve out for unsecured creditors and will allow DTE to recoup some of its costs related to the case. This matter also needs to be concluded in order to allow the Trustee to bring the administration of the Debtor's estate to an end.

D. The nature and breadth of releases to be obtained by JW and the Trustee

30. The Settlement Agreement contains customary mutual releases between JW and the Trustee on behalf of the bankruptcy estate. This is to bring finality to the claims and disputes between the Trustee and JW.

E. The competency and experience of counsel supporting, and the experience and knowledge of the bankruptcy judge reviewing, the settlement; the Settlement Agreement was the result of arms-length negotiations

31. Counsel for the Trustee, the Trustee and JW, as well as Chief Judge Moses, are competent and experienced. The Settlement Agreement was reached after seventeen (17) months of litigation and, over seven (7) months of discovery. The settlement was reached following extensive arms-length negotiations.

32. The Trustee recognizes that a degree of uncertainty and litigation risk exists with respect to continued litigation. The Trustee believes that the Settlement Agreement fairly accounts for such risk and provides for the resolution of disputes without the need for continued litigation and its attendant costs and expenses. The Trustee has attempted to achieve a resolution that maximizes value for the estate. Consequently, the Trustee urges that the Settlement Agreement is fair, equitable, and in the best interest of the estate and all concerned parties.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement and granting the Trustee such other legal or equitable relief as the Court may deem just and proper.

[Remainder of the page intentionally left blank]

DATED: May 13, 2025

Respectfully submitted,

BYMAN & ASSOCIATES, PLLC

/s/ Randy W. Williams

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Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2025, a true and correct copy of the foregoing *Motion for Order Approving Compromise and Settlement Pursuant to Bankruptcy Rule 9019* was filed with the Court and served via the Court's CM/ECF notification system upon all parties registered to receive such electronic notices in this case and upon all entities listed on the court's mailing matrix attached hereto.

/s/ Randy W. Williams

Randy W. Williams

Label Matrix for local noticing

0541-4

Case 21-30936

Southern District of Texas

Houston

Tue May 13 16:05:57 CDT 2025

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

BDO USA, LLP
4250 Lancaster Pike, Suite 120
Wilmington, DE 19805

Telecheck
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Addresses marked (c) above for the following entity/entities were corrected
as required by the USPS Locatable Address Conversion System (LACS).

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9 W Broad 9th Floor
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)DTE Energy Trading, Inc.

(u)ERCOT

(u)Jackson Walker LLP

(u)Luminant Energy Company LLC

(u)Aqua Chill Gulf Coast
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(d)Brilliant Energy, LLC
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(u)Energy Services Group, LLC

End of Label Matrix	
Mailable recipients	262
Bypassed recipients	7
Total	269